

Federal Deposit Insurance Corporation
Re: RIN 3064-AC9
Comments on Proposed Guidance Q&A

December 23, 2005

Dear Sirs,

We offer our comments on the proposed Questions & Answers as follows:

12(g)(4)-2 “When do activities that provide housing for middle and upper-income persons qualify for favorable consideration as community development activities when”

The proposed question incorporates the word “when” twice in the same sentence. We suggest replacing the second “when” with the word “that” to make the sentence less confusing.

A2 - this answer indicates that an activity (in distressed or disaster areas) that provides housing “not necessarily for low- or moderate income individuals” may be considered as community development activity under certain circumstances. Moreover, it also indicates that loans to businesses may be considered as community development activities under certain circumstances too. Heretofore, in many of these cases loans would be reportable under HMDA or CRA and only multi-family affordable housing loans could be reported as loans under HMDA and community development activity under CRA. Does this answer indicate that qualified loans to upper- and middle-income mortgage borrowers would be reported under HMDA as mortgages and concomitantly under CRA as community development activity? Would the answer apply to small business loans as well or does the old rule apply (that loans reportable as mortgages or small business loans, except multi-family affordable housing, are reported as such even though they have community development characteristics)? If the loans must be reportable only as mortgages or small business loans, should lenders maintain a memo file to be reviewed by examiners for evaluation under community development activities for possible credit?

Also, with respect to Underserved tracts and activities providing housing to middle- and upper-income persons, is there any threshold for the percentage of LMI beneficiaries in order for the activity to qualify as community development?

12(g)(4) (ii)-1 What is a Designated Disaster Area?

A 1 - There are at least 3 types of Federally designated disaster declarations: Major Disaster Declarations, Emergency Declarations and Fire Management Assistance Declarations. The idea of a lag period is a good idea, but the appropriate length would depend on the nature of the disaster declaration. Also, it is not clear in the revised joint final rule when the time period for disaster designation would begin and end – on the exact date of the declaration and its expiration, or on the last day of the month in which the declaration was declared or expired. This would apply to the lag period as well.

We would suggest that the agencies consider a common annual expiration date for all tracts whose designation as disaster areas has expired in a given year in order to facilitate the administration and tracking of qualified activity by banks. For example, any tracts whose disaster designation has expired in 2005 would have a lag period that would expire at the end of 2006. If the agencies do not adopt such an approach, tracking multiple designations could become a nightmare for both examiners and bankers. One of the aims of the revised regulation was regulatory “relief”, but the creation of 3 additional types of tracts, any of which may change classification in any given year and some tracts in any given month or any *given day* would be particularly burdensome.

The definition of disaster areas may not be compatible on the primary geographic unit used in CRA compliance, i.e., census tracts. This is particularly possible in situations that may be designated by states as disaster areas. For example, a state may declare a county subdivision such as a minor civil division whose boundaries do not coincide with census tracts. How will tracts that are partly in declared disaster areas be evaluated?

12(g)(4) (ii)-2 How are revitalization activities in a designated disaster area considered?

A 2 - We think it is inconsistent to exclude from “revitalization activities” in a *disaster area* activities that would rebuild infrastructure such as those identified as qualified if the tract is an *underserved* tract. Yet that appears to be the way the revised rule considers such activities. For example, the recovery effort in the disaster areas struck by Hurricane Katrina involves much activity to restore damaged or destroyed infrastructure. As interpreted by the proposed Q&A’s, much of that activity apparently would not qualify as community development unless it occurred in areas coincidentally designated as underserved (which seems to be the only tract designation in which infrastructure activities are considered to be community development activities). Was that the intended interpretation? If not, then we suggest the answer be amended to state that disaster area tracts will be evaluated the same way such activities are evaluated in LMI, distressed *or underserved* tracts.

We also would like the agencies to clarify if activities to assist persons who had been living in a disaster area but who have been temporarily displaced outside the disaster area qualify for community development activities by banks outside the disaster area but within an area where displaced persons from the disaster area are temporarily relocated. Many banks in Texas, for example, have sought to provide assistance to persons displaced from New Orleans into Texas as a result of Hurricane Katrina. Since both the recipient and the benefactor (bank) are located outside the disaster area, it would appear that economic assistance extended by such institutions would not qualify as community development activity. But this also appears contrary to the spirit of the revised rule.

12(g)(4) (iii)-2 How often will the agencies update the list of Distressed or Underserved geographies?

A 2 This answer states that the agencies will publish the list annually. However, the agencies already have published the list twice within 3 months of the effective date of the revised rule. Will the agencies publish the list more frequently? Also, will the list be effective for an entire calendar year or will it be effective on some other annual date? (We encourage the agencies to adopt a rule that would make the effective date coincide with the calendar year to facilitate tracking lender performance)

12(g)(4) (iii) - 3 How are “revitalization or stabilization” activities in . . . distressed geographies and . . . underserved geographies evaluated?”

A3 Again, we ask the question, in underserved tracts, housing for middle- and upper income persons may qualify as community development if the housing is not exclusively for middle- and upper income persons (unlike distressed geographies in which housing *exclusively* for middle- and upper income persons may qualify as community development activity if the activity revitalizes or stabilizes the community). In *undeserved tracts*, what is the required percentage of housing for LMI persons in these situations? Must the activity *primarily* benefit low- or moderate income persons or is any percentage acceptable?

Aside from the foregoing questions and comments regarding the proposed Questions & Answers, we suggest the agencies clarify the following questions that pertain to widespread and inconsistently reported (as well as inconsistently interpreted by field examiners) small business lending activities.

First, many small business loans are extended to corporations whose principals almost always guarantee the loans. Frequently, these guarantees are collateralized by the residential property of the principals. It is noted that the loan itself is not collateralized by the residential property. Technically, the loan cannot be secured by assets not owned by the borrower (the corporation). Therefore, the residential property serves as indirect collateral by virtue of the guarantee. The distinction between direct collateral and indirect collateral has been applied by the agencies with respect to HMDA and refinanced mortgages and the determination of whether they should be reported. Would the distinction apply to CRA as well?

Second, there are many small business lines of credit extended annually that employ a demand note. These lines are routinely renewed annually subject to credit review and other conditions. The CRA Guide states that lines of credit that are refinanced or renewed should be reported subject to the once-per-year rule. However, based on our observations of many community banks with whom we work, there is great inconsistency in reporting these loans. Some banks report the lines based on the CRA Guide statement on lines of credit. However, other banks take the position that the lines are not reportable because the demand note is not being rewritten (in most cases to avoid any potential problems with the perfection of a security interest) and the explanation of a renewal in the CRA Guide is that a renewal applies when the term of the loan is extended. These banks interpret this to mean that the callable on demand feature is not changed

and therefore the loan is not renewed or refinanced. FDIC examiners have also expressed different opinions on this matter. Since this is a common practice and since the interpretation of the reporting requirement has been inconsistent thereby undermining the integrity of the reported data, we encourage the agencies to make a clear statement on renewed lines of credit under these circumstances.

Finally, we are perplexed by the removal of the “innovative and complex” consideration of community development activity for Intermediate-small banks. The published comments by the agencies seem to suggest this as a benefit for IS banks. But we have understood this factor to be a consideration only when it positively affected a bank’s performance. In fact, the OCC examiner’s manual explicitly states that this can not be used as a negative factor in developing an evaluation. So, why have the agencies removed this consideration thereby making it more difficult for Intermediate-small banks to receive the benefit of innovative, complex or flexible community development activities?

Respectfully submitted by

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